

## ADVISORY OPINION 93-024

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

November 10, 1993

Chairman Robert Gable  
The Republican Party of Kentucky  
Capitol Avenue at Third Street  
P.O. Box 1068  
Frankfort, Kentucky 40602

Dear Chairman Gable:

Thank you for contacting the Registry. You are requesting an advisory opinion as the Chairman of the Republican Party of Kentucky ("RPK"). The opinion you are requesting would apply to the RPK, its officers, employees, and other members of the Kentucky Republican State Central Committee, and to persons or entities contributing to the Republican Party of Kentucky Building Fund ("building fund"). You have asked four questions based on the following facts:

The RPK proposes to establish and administer a building fund as an entirely separate bank account pursuant to federal election laws in reliance on advisory opinions promulgated by the Federal Election Commission ("FEC").

You have proposed the following list of guidelines to administer the building fund:

**Create a new Bank Account** (checking or interest-bearing NOW account(s), etc) for the Republican Party of Kentucky and styled "Republican Party of Kentucky Building Fund" (the "Building Fund").

**Contributions** Corporate contributions are permitted; all contributions are unlimited in amount.

**Reporting of Contributions and Expenditures** Public reporting is not required.

**Expenditures Permitted to be Paid by Building Fund**

- purchase or construction of a building, if not for any particular candidate
- payments on existing mortgage, including repayment in full of balance of existing mortgage
- payments for additions and major alterations to the building
- major structural repairs such as rebuilding foundation, bracing up a wall, replacement of the roof, or portions thereof; repainting interior or exterior; moving interior walls
- addition or replacement of major built-in fixtures, bathtubs, commodes, kitchen sinks, built-in bookcases
- major landscaping alterations; retaining wall rebuilding, new trees, reconstruction or complete blacktopping a driveway or parking lot
- wall-to-wall carpeting

- in-wall wiring and switching machinery for building-wide phone system (NOT the phone instruments)

**Expenditures NOT Permitted to be Paid from Building Fund** (treat as "party overhead" and pay from Federal Account, with reimbursement of proper percentage from non-Federal account, as usual)

- costs of administering the Building Fund; check printing; bookkeeper's wages; bank charges
- property taxes, assessments, and similar charges; rebuilding sidewalk sections ordered by City Government to be rebuilt
- routine minor maintenance to building: salt icy sidewalks, repair broken window, fix a damaged gutter, clean out clogged roof or gutter drains, paint the front door
- landscaping and grounds maintenance: lawn mowing and fertilizing, hedge trimming, tree pruning and removal, patching blacktop parking lot
- furniture, curtains, movable area rugs
- telephone instruments, and maintenance of phone system

### **Income Tax Considerations**

- Any interest earned on the Building Fund may be added to said fund
- Income tax return for the party will combine income earned from Federal account, Non-Federal ("state") account, Tax Check-Off account, and the Building Fund account
- Income taxes incurred by Building Fund are NOT permitted to be paid from Building Fund; pay the same way as with any other "party overhead"
- Contributors could NOT deduct their contributions to the Building Fund on their own individual or corporate income tax returns.

For authority, you cite 11 CFR 107.7(12) and 11 CFR 114.1(2)(ix) which interpret the federal election law preemption statute. You also cite FEC advisory opinions which interpret the federal election law preemption statute and the regulations promulgated to interpret it. The advisory opinions you cite stand for the following:

1. FEC AO 1983-9 stands for the proposition that funds donated to a party's building fund for the purchase or construction of an office facility are not contributions under the act. Funds donated for administrative costs are contributions.
2. FEC AO 1986-40 stands for the proposition that a state political party may accept corporate donations to its building fund.
3. FEC AO 1988-12 recognizes that donations to a national or state committee of a political party which are specifically designated to defray the costs of construction or purchase of an office facility are not considered contributions within the act or expenditures provided that the facility is not acquired for the purpose of influencing the election of any candidate in any particular election for federal office.
4. FEC AO 1991-5 stands for the proposition that a state central committee may accept corporate funds (donations) to build a headquarters building, even though state law prohibits corporate contributions, but the funds will have to be reported under the state law, since there is no federal reporting requirement.
5. FEC AO 1993-9 stands for the proposition that a state political party may build a headquarters without a substantial state regulation by using a separate, segregated building fund that will: a) pay off the balance of its land contract on the building which presently serves as headquarters for its federal and non-federal activities; and b) in order to raise money for the above building fund, the state political party may sell its land contract interest (i.e., an equitable interest in the real property covered by the contract in its existing headquarters) and apply the proceeds to the building fund established to purchase or construct a headquarters.

Based upon the facts and law that you have provided, you ask four questions as follows:

1. Would the proposed building fund, administered in conformity with the proposed guidelines, fall into an area where federal law preempts Kentucky state law?
2. Would the proposed building fund be permitted to accept contributions (donations) in unlimited amounts?
3. Would the proposed building fund be permitted to accept corporate contributions? and
4. Would the proposed building fund be permitted to accept contributions from any other persons or entities, limited only by federal law?

First, please note that even if your proposed building fund were in an area preempted by federal law, FEC AO 1991-5 states: "The commission concludes that any reporting responsibility imposed by the State of Tennessee regarding building fund receipts and disbursements of the Tennessee Democratic Party would not be preempted." Id. Likewise, KRS 121.180(2) states all "[s]tate and county executive committees shall make a full report, upon a prescribed form, to the Registry, of all money, loan, or other things of value, received from any source..." Id. (Emphasis added). Thus, the FEC specifically defers to state law in the area of reporting money raised and spent for a state party building fund.

The answer to question one in your questions is no. As set forth above, you have relied on specific authority for an affirmative answer to question one. However, in the "Expenditures Permitted to be Paid by the Building Fund" section in your proposed guidelines, you have proposed expenditures that have yet to be included within the term: "purchase or construction of an office facility " as interpreted by the FEC. For instance, none of the advisory opinions you cite have considered the question of whether or not "additional replacement of major built-in fixtures, bathtubs, commodes, kitchen sinks, [and} built-in bookcases" fit within the term "purchase or construction of an office facility." Therefore, unlike the Michigan Republican Party in FEC AO 1993-9 and the Tennessee Democratic Party in FEC AO 1991-5, you have asked the Kentucky Registry of Election Finance to interpret, rather than follow federal authority. The Registry would suggest that you first submit the question you have asked to the FEC for an advisory opinion. In the alternative, you may wish to submit a question to the Registry that is materially indistinguishable from the federal advisory opinions you cite. Because it is necessary for the Registry to give a yes answer to question one before answering questions two, three, and four, the Registry cannot answer questions two, three, and four at this time.

This opinion is based upon the course of action outlined in your letter. If you should have any more questions, please contact us. Thank you.

Sincerely,

Timothy E. Shull  
General Counsel

TES/dt